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Approved For Release 2003/06/26 : CIA-RDP84-00780R006700040019-7

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94TH CONGRESS
1ST SESSION

S. 2008

IN THE SENATE OF THE UNITED STATES

JUNE 25 (legislative day, JUNE 6), 1975

Mr. TUNNEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the constitutional rights and privacy of individuals upon whom criminal justice information has been collected and to control the collection and dissemination of criminal justice information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Criminal Justice Infor-
4 mation Control and Protection of Privacy Act of 1975".

TITLE I—PURPOSE AND SCOPE

FINDINGS

7 SEC. 101. The Congress hereby finds and declares that—
8 (a) The responsible maintenance, use, and dissemina-
9 tion of complete and accurate criminal justice information

1 among criminal justice agencies is recognized as necessary
2 and indispensable to effective law enforcement and criminal
3 justice and is encouraged.

4 (b) The irresponsible use or dissemination of inaccurate
5 or incomplete information, however, may infringe on individ-
6 ual rights.

7 (c) While the enforcement of criminal laws and the reg-
8 ulation of criminal justice information is primarily the re-
9 sponsibility of State and local government, the Federal
10 Government has a substantial and interconnected role.

11 (d) This Act is based on the powers of the Congress—

12 (1) to place reasonable restrictions on Federal
13 activities and upon State and local governments which
14 receive Federal grants or other Federal services or
15 benefits, and

16 (2) to facilitate and regulate interstate commerce.

17 DEFINITIONS

18 SEC. 102. As used in this Act—

19 (1) "Automated" means utilizing electronic computers
20 or other automatic data processing equipment, as distin-
21 guished from performing operations manually.

22 (2) "Dissemination" means any transfer of information,
23 whether orally, in writing, or by electronic means.

24 (3) "The administration of criminal justice" means any
25 activity by a criminal justice agency directly involving the

1 apprehension, detention, pretrial release, posttrial release,
2 prosecution, defense, adjudication, or rehabilitation of ac-
3 cused persons or criminal offenders or the collection, storage,
4 dissemination, or usage of criminal justice information.

5 (4) "Criminal justice agency" means a court or any
6 other governmental agency or subunit thereof which as its
7 principal function performs the administration of criminal
8 justice and any other agency or subunit thereof which per-
9 forms criminal justice activities but only to the extent that
10 it does so.

11 (5) "Criminal justice information" means arrest record
12 information, nonconviction record information, conviction
13 record information, criminal history record information, and
14 correctional and release information. The term does not in-
15 clude criminal justice investigative information or criminal
16 justice intelligence information.

17 (6) "Arrest record information" means notations of
18 arrest, detention, indictment, filing of information, or other
19 formal criminal charge on an individual which does not in-
20 clude the disposition arising out of that arrest, detention,
21 indictment, information, or charge.

22 (7) "Criminal history record information" means ar-
23 rest record information and any disposition arising therefrom.

24 (8) "Conviction record information" means criminal
25 history record information disclosing that a person has

1 pleaded guilty or nolo contendere to or was convicted of
2 any criminal offense in a court of justice, sentencing informa-
3 tion, and whether such plea or judgment has been modified
4 or reversed.

5 (9) "Nonconviction record information" means crimi-
6 nal history record information which is not conviction record
7 information.

8 (10) "Disposition" means information disclosing that
9 a decision has been made not to bring criminal charges or
10 that criminal proceedings have been concluded, abandoned,
11 or indefinitely postponed.

12 (11) "Correctional and release information" means in-
13 formation on an individual compiled in connection with bail
14 or pretrial or posttrial release proceedings, reports on the
15 physical or mental condition of an alleged offender, reports
16 on presentence investigations, reports on inmates in correc-
17 tional institutions or participants in rehabilitation programs,
18 and probation and parole reports.

19 (12) "Criminal justice investigative information" means
20 information associated with an identifiable individual com-
21 piled by a criminal justice agency in the course of conduct-
22 ing a criminal investigation of a specific criminal act including
23 information pertaining to that criminal act derived from re-
24 ports of informants and investigators, or from any type of
25 surveillance. The term does not include criminal justice in-

1 formation nor does it include initial reports filed by a crim-
2 inal justice agency describing a specific incident, not indexed
3 or accessible by name and expressly required by State or
4 Federal statute to be made public.

5 (13) "Criminal justice intelligence information" means
6 information associated with an identifiable individual com-
7 piled by a criminal justice agency in the course of conducting
8 an investigation of an individual relating to possible future
9 criminal activity of an individual, or relating to the reliability
10 of such information, including information derived from re-
11 ports of informants, investigators, or from any type of sur-
12 veillance. The term does not include criminal justice in-
13 formation nor does it include initial reports filed by a
14 criminal justice agency describing a specific incident, not
15 indexed or accessible by name and expressly required by
16 State or Federal statute to be made public.

17 (14) "Judge of competent jurisdiction" means (a) a
18 judge of a United States district court or a United States
19 court of appeals; (b) a Justice of the Supreme Court of the
20 United States; (c) a judge of any court of general criminal
21 jurisdiction in a State; or (d) for purposes of section 208
22 (b) (5), any other official in a State who is authorized by a
23 statute of that State to enter orders authorizing access to
24 sealed criminal justice information.

1 (15) "Attorney General" means the Attorney Gen-
2 eral of the United States.

3 (16) "State" means any State of the United States,
4 the District of Columbia, the Commonwealth of Puerto Rico,
5 and any territory or possession of the United States.

6 APPLICABILITY

7 SEC. 103. (a) This Act applies to criminal justice in-
8 formation, criminal justice investigative information, or
9 criminal justice intelligence information maintained by
10 criminal justice agencies—

11 (1) of the Federal Government,

12 (2) of a State or local government and funded in
13 whole or in part by the Federal Government,

14 (3) which exchange information interstate, and

15 (4) which exchange information with an agency
16 covered by paragraph (1), (2), or (3) but only to the
17 extent of that exchange.

18 (b) This Act applies to criminal justice information,
19 criminal justice intelligence information and criminal justice
20 investigative information obtained from a foreign govern-
21 ment or an international agency to the extent such informa-
22 tion is commingled with information obtained from domestic
23 sources. Steps shall be taken to assure that, to the maximum
24 extent feasible, whenever any information subject to this Act
25 is provided to a foreign government or an international

1 agency, such information is used in a manner consistent
2 with the provisions of this Act.

3 (c) The provisions of this Act do not apply to—

4 (1) original books of entry or police blotters,
5 whether automated or manual, maintained by a criminal
6 justice agency at the place of original arrest or place of
7 detention, not indexed or accessible by name and re-
8 quired to be made public;

9 (2) court records of public criminal proceedings or
10 official records of pardons or paroles or any index there-
11 to organized and accessible by date or by docket or file
12 number, or organized and accessible by name so long as
13 such index contains no other information than a cross
14 reference to the original pardon or parole records by
15 docket or file number;

16 (3) Public criminal proceedings and court opinions,
17 including published compilations thereof;

18 (4) records of traffic offenses maintained by depart-
19 ments of transportation, motor vehicles, or the equivalent,
20 for the purpose of regulating the issuance, suspension,
21 revocation, or renewal of drivers' licenses;

22 (5) records relating to violations of the Uniform
23 Code of Military Justice but only so long as those records
24 are maintained solely within the Department of
25 Defense; or

1 (6) statistical or analytical records or reports in
2 which individuals are not identified and from which their
3 identities are not ascertainable.

4 TITLE II—COLLECTION AND DISSEMINATION OF
5 CRIMINAL JUSTICE INFORMATION, CRIMI-
6 NAL JUSTICE INVESTIGATIVE INFORMA-
7 TION, AND CRIMINAL JUSTICE INTELLI-
8 GENCE INFORMATION

9 DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE
10 INFORMATION—CRIMINAL JUSTICE AGENCIES

11 SEC. 201. (a) With limited exceptions hereafter de-
12 scribed, access to criminal justice information, criminal justice
13 investigative information, and criminal justice intelligence in-
14 formation shall be limited to authorized officers or employees
15 of criminal justice agencies, and the use or further dissemina-
16 tion of such information shall be limited to purposes of the
17 administration of criminal justice.

18 (b) The use and dissemination of criminal justice in-
19 formation shall be in accordance with criminal justice agency
20 procedures reasonably designed to insure—

21 (1) that the use or dissemination of arrest record
22 information or nonconviction record information is re-
23 stricted to the following purposes—

24 (A) The screening of an employment applica-
25 tion or review of employment by a criminal justice

1 agency with respect to its own employees or appli-
2 cants,

3 (B) The commencement of prosecution, deter-
4 mination of pretrial or posttrial release or detention,
5 the adjudication of criminal proceedings, or the
6 preparation of a presentence report,

7 (C) The supervision by a criminal justice
8 agency of an individual who had been committed
9 to the custody of that agency prior to the time the
10 arrest occurred or the charge was filed,

11 (D) The investigation of an individual when
12 that individual has already been arrested or detained,

13 (E) The development of investigative leads
14 concerning an individual who has not been arrested,
15 when there are specific and articulable facts which,
16 taken together with rational inferences from those
17 facts, warrant the conclusion that the individual has
18 committed or is about to commit a criminal act and
19 the information requested may be relevant to that
20 act,

21 (F) The alerting of an official or employee of
22 a criminal justice agency that a particular individual
23 may present a danger to his safety, or

24 (G) Similar essential purposes to which the in-

1 formation is relevant as defined in the procedures
2 prescribed pursuant to the section; and

3 (2) that correctional and release information is dis-
4 seminated only to criminal justice agencies; or to the
5 individual to whom the information pertains, or his attor-
6 ney, where authorized by Federal or State statute, court
7 rule, or court order.

8 IDENTIFICATION AND WANTED PERSON INFORMATION

9 SEC. 202. Personal identification information, including
10 fingerprints, voice prints, photographs, and other physical
11 descriptive data, may be used or disseminated for any offi-
12 cial purpose, but personal identification information which
13 includes arrest record information or criminal history record
14 information may be disseminated only as permitted by this
15 Act. Information that a person is wanted for a criminal
16 offense and that judicial process has been issued against him,
17 together with an appropriate description and other informa-
18 tion which may be of assistance in locating the person or
19 demonstrating a potential for violence, may be disseminated
20 for any authorized purpose related to the administration of
21 criminal justice. Nothing in this Act prohibits direct access by
22 a criminal justice agency to automated wanted person infor-
23 mation.

1 DISSEMINATION, ACCESS AND USE OF CRIMINAL JUSTICE
2 INFORMATION—NONCRIMINAL JUSTICE AGENCIES

3 SEC. 203. (a) Except as otherwise provided by this Act,
4 conviction record information may be made available for
5 purposes other than the administration of criminal justice
6 only if expressly authorized by Federal or State statute.

7 (b) Arrest record information indicating that an indict-
8 ment, information, or formal charge was made against an
9 individual within twelve months of the date of the request
10 for the information, and is still pending, may be made avail-
11 able for a purpose other than the administration of criminal
12 justice if expressly authorized by Federal or State statute.
13 Arrest record information made available pursuant to this
14 subsection may be used only for the purpose for which it
15 was made available and may not be copied or retained by the
16 requesting agency beyond the time necessary to accomplish
17 that purpose.

18 (c) When conviction record information or arrest rec-
19 ord information is requested pursuant to subsections (a) or
20 (b), the requesting agency or individual shall notify the
21 individual to whom the information relates that such in-
22 formation about him will be requested and that he has the

1 right to seek review of the information prior to its dissemi-
2 nation.

3 (d) Criminal justice information may be made available
4 to qualified persons for research related to the administration
5 of criminal justice.

6 (e) A criminal justice agency may disseminate criminal
7 justice information, upon request, to officers and employees
8 of the Immigration and Naturalization Service, consular
9 officers, and officers and employees of the Visa Office of the
10 Department of State, who require such information for the
11 purpose of administering the immigration and nationality
12 laws. The Attorney General and the Secretary of State shall
13 adopt internal operating procedures reasonably designed to
14 insure that arrest record information received pursuant to
15 this subsection is used solely for the purpose of developing
16 further investigative leads and that no decision adverse to
17 an individual is based on arrest record information unless
18 there has been a review of the decision at a supervisory
19 level.

20 (f) A criminal justice agency may disseminate criminal
21 justice information, upon request, to officers and employees
22 of the Bureau of Alcohol, Tobacco, and Firearms, the United
23 States Customs Service, the Internal Revenue Service and
24 the Office of Foreign Assets Control of the Department of
25 the Treasury, who require such information for the purpose

1 of administering those laws under their respective jurisdic-
2 tions. The Attorney General and the Secretary of the Treas-
3 ury shall adopt internal operating procedures reasonably
4 designed to insure that arrest record information received
5 pursuant to this subsection is used solely for the purpose of
6 developing further investigative leads and that no decision
7 adverse to an individual is based on arrest record informa-
8 tion unless there has been a review of the decision at a
9 supervisory level.

10 (g) The Drug Enforcement Administration of the
11 United States Department of Justice may disseminate crimi-
12 nal record information to federally registered manufacturers
13 and distributors of controlled substances for use in connec-
14 tion with the enforcement of the Controlled Substances Ad-
15 ministration Act.

16 (h) Nothing in this Act prevents a criminal justice
17 agency from disclosing to the public factual information con-
18 cerning the status of an investigation, the apprehension, ar-
19 rest, release, or prosecution of an individual, the adjudication
20 of charges, or the correctional status of an individual, if such
21 disclosure is reasonably contemporaneous with the event to
22 which the information relates. Nor is a criminal justice
23 agency prohibited from confirming prior arrest record infor-
24 mation or criminal record information to members of the
25 news media or any other person, upon specific inquiry as

1 to whether a named individual was arrested, detained, in-
2 dicted, or whether an information or other formal charge was
3 filed, on a specified date, if the arrest record information or
4 criminal record information disclosed is based on data ex-
5 cluded by section 103 (b) from the application of this Act.

6 DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE
7 INFORMATION—APPOINTMENTS AND EMPLOYMENT
8 INVESTIGATIONS

9 SEC. 204. (a) A criminal justice agency may disseminate
10 criminal justice information, whether or not sealed pursuant
11 to section 208, criminal justice intelligence information, and
12 criminal justice investigative information to a Federal, State,
13 or local government official who is authorized by law to ap-
14 point or nominate judges, executive officers of law enforce-
15 ment agencies or members of the Commission on Criminal
16 Justice Information created under section 301 or any State
17 board or agency created or designated pursuant to section
18 307, and to any legislative body authorized to approve such
19 appointments or nominations. The criminal justice agency
20 shall disseminate such information concerning an individual
21 only upon notification from the appointing or nominating
22 official that he is considering that individual for such an
23 office, or from the legislative body that the individual has
24 been nominated for the office, and that the individual has

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1 been notified of the request for such information and has
2 given his written consent to the release of the information.

3 (b) A criminal justice agency may disseminate arrest
4 record information and criminal history record information
5 to an agency of the Federal Government for the purpose
6 of an employment application investigation, an employment
7 retention investigation, or the approval of a security clear-
8 ance for access to classified information, when the Federal
9 agency requests such information as a part of a comprehen-
10 sive investigation of the history and background of an in-
11 dividual, pursuant to an obligation to conduct such an
12 investigation imposed by a Federal statute or Federal execu-
13 tive order, and pursuant to agency regulations setting forth
14 the nature and scope of such an investigation. Arrest record
15 information or criminal history record information that has
16 been sealed may be made available only for the purpose of
17 the approval of a security clearance. For investigations con-
18 cerning security clearances for access to information classi-
19 fied as top secret, criminal justice intelligence information
20 and criminal justice investigative information may be made
21 available pursuant to this subsection. At the time he files
22 his application, seeks a change of employment status, ap-
23 plies for a security clearance, or otherwise causes the initia-
24 tion of the investigation, the individual shall be put on notice

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1 that such an investigation will be conducted and that access
2 to this type of information will be sought.

3 (c) Any information made available pursuant to this
4 section may be used only for the purpose for which it is
5 made available and may not be disseminated, copied, or
6 retained by the requester beyond the time necessary to ac-
7 complish the purpose for which it was made available.

8 SECONDARY DISSEMINATION OF CRIMINAL JUSTICE

9 INFORMATION

10 SEC. 205. Any agency or individual having access to,
11 or receiving criminal justice information is prohibited, di-
12 rectly or through any intermediary, from disseminating such
13 information to any individual or agency not authorized to
14 have such information; except that correctional officials
15 of criminal justice agencies, with the consent of an individual
16 under their supervision to whom the information refers, may
17 orally represent the substance of the individual's criminal
18 history record information to prospective employers or other
19 individuals if they believe that such representation may be
20 helpful in obtaining employment or rehabilitation for the
21 individual.

22 METHOD OF ACCESS TO CRIMINAL JUSTICE INFORMATION

23 SEC. 206. (a) Except as provided in section 203 (d) or
24 in subsection (b) of this section, a criminal justice agency
25 may disseminate arrest record information or criminal his-

1 tory record information only if the inquiry is based upon
2 identification of the individual to whom the information re-
3 lates by means of name and other personal identification
4 information. After the arrest of an individual, such informa-
5 tion concerning him shall be available only on the basis of
6 positive identification of him by means of fingerprints or other
7 equally reliable identification record information.

8 (b) Notwithstanding the provisions of subsection (a),
9 a criminal justice agency may disseminate arrest record in-
10 formation and criminal history record information for criminal
11 justice purposes where inquiries are based upon categories
12 of offense or data elements other than personal identification
13 information if the criminal justice agency has adopted pro-
14 cedures reasonably designed to insure that such information
15 is used only for the purpose of developing investigative leads
16 for a particular criminal offense and that the individuals
17 to whom such information is disseminated have a need to
18 know and a right to know such information.

19 SECURITY, ACCURACY, AND UPDATING OF CRIMINAL
20 JUSTICE INFORMATION

21 SEC. 207. (a) Each criminal justice agency shall adopt
22 procedures reasonably designed at a minimum—

23 (1) to insure the physical security of criminal justice
24 information, to prevent the unauthorized disclosure of the
25 information, and to insure that the criminal justice in-

1 formation is currently and accurately revised to include
2 subsequently received information and that all agencies
3 to which such information is disseminated or from which
4 it is collected are currently and accurately informed of
5 any correction, deletion, or revision of the information;

6 (2) to insure that criminal justice agency personnel
7 responsible for making or recording decisions relating to
8 dispositions shall as soon as feasible report such disposi-
9 tions to an appropriate agency or individual for inclusion
10 with arrest record information to which such disposi-
11 tions relate;

12 (3) to insure that records are maintained and kept
13 current for at least three years with regard to—

14 (A) requests from any other agency or person
15 for criminal justice information, the identity and
16 authority of the requester, the nature of the informa-
17 tion provided, the nature, purpose, and disposition
18 of the request, and pertinent dates; and

19 (B) the source of arrest record information and
20 criminal history information; and

21 (4) to insure that criminal justice information may
22 not be submitted, modified, updated, or removed from
23 any criminal justice agency record or file without verifi-
24 cation of the identity of the individual to whom the
25 information refers and an indication of the person or

1 agency submitting, modifying, updating, or removing
2 the information.

3 (b) If the Commission on Criminal Justice Informa-
4 tion finds that full implementation of this section is infeasible
5 because of cost or other factors it may exempt the provisions
6 of this section from application to information maintained
7 prior to the effective date of this Act.

8 SEALING AND PURGING OF CRIMINAL JUSTICE
9 INFORMATION

10 SEC. 208. (a) Each criminal justice agency shall adopt
11 procedures providing at a minimum—

12 (1) for the prompt sealing or purging of criminal
13 justice information when required by State or Federal
14 statute, regulation, or court order;

15 (2) for the prompt sealing or purging of criminal
16 justice information relating to an offense by an individual
17 who has been free from the jurisdiction or supervision of
18 any criminal justice agency for a period of seven years,
19 if the individual has previously been convicted and such
20 offense is not specifically exempted from sealing by a
21 Federal or State statute;

22 (3) for the sealing or purging of arrest record in-
23 formation after a period of two years following an arrest,
24 detention, or formal charge, whichever comes first, if no
25 conviction of the individual occurred during that period,

1 no prosecution is pending at the end of the period, and
2 the individual is not a fugitive; and

3 (4) for the prompt purging of criminal history rec-
4 ord information in any case in which a law enforcement
5 agency has elected not to refer the case to the prosecutor
6 or in which the prosecutor has elected not to file an
7 information, seek an indictment or other formal criminal
8 charge.

9 (b) Criminal justice information sealed pursuant to this
10 section may be made available—

11 (1) in connection with research pursuant to sub-
12 section 203 (d) ;

13 (2) in connection with a review by the individual
14 or his attorney pursuant to section 209;

15 (3) in connection with an audit conducted pur-
16 suant to section 304 or 310;

17 (4) where a conviction record has been sealed and
18 an indictment, information, or other formal criminal
19 charge is subsequently filed against the individual; or

20 (5) where a criminal justice agency has obtained
21 an access warrant from a State judge of competent
22 jurisdiction if the information sought is in the posses-
23 sion of a State or local agency, or from a Federal judge
24 of competent jurisdiction if the information sought is in
25 the possession of a Federal agency. Such warrants may

1 be issued as a matter of discretion by the judge in cases
2 in which probable cause has been shown that (A)
3 such access is imperative for purposes of the criminal
4 justice agency's responsibilities in the administration of
5 criminal justice, and (B) the information sought is not
6 reasonably available from any other source or through
7 any other method.

8 (c) Access to any index of sealed criminal justice in-
9 formation shall be permitted only to the extent necessary to
10 implement subsection (b). Any index of sealed criminal
11 justice information shall consist only of personal identifica-
12 tion information and the location of the sealed information.

13 ACCESS BY INDIVIDUALS TO CRIMINAL JUSTICE INFORMA-
14 TION FOR PURPOSES OF CHALLENGE

15 SEC. 209. (a) Any individual shall, upon satisfactory
16 verification of his identity and compliance with applicable
17 rules or regulations, be entitled to review any arrest record
18 information or criminal history record information concern-
19 ing him maintained by any criminal justice agency and to
20 obtain a copy of it if needed for the purpose of challenging
21 its accuracy or completeness or the legality of its mainte-
22 nance.

23 (b) Each criminal justice agency shall adopt and pub-
24 lish rules or regulations to implement this section.

25 (c) The final action of a criminal justice agency on a

1 request to review and challenge criminal justice information
2 in its possession as provided by this section, or a failure to
3 act expeditiously on such a request, shall be reviewable pur-
4 suant to a civil action under section 308.

5 (d) No individual who, in accord with this section,
6 obtains information regarding himself may be required or
7 requested to show or transfer records of that information to
8 any other person or any other public or private agency or
9 organization.

10 CRIMINAL JUSTICE INTELLIGENCE INFORMATION

11 SEC. 210. (a) Criminal justice intelligence information
12 may be maintained by a criminal justice agency only for
13 official criminal justice purposes. It shall be maintained in
14 a physically secure environment and shall be kept separate
15 from criminal justice information.

16 (b) Criminal justice intelligence information regarding
17 an individual may be maintained only if grounds exist con-
18 necting such individual with known or suspected criminal
19 activity and if the information is pertinent to such criminal
20 activity. Criminal justice intelligence information shall be
21 reviewed at regular intervals, but at a minimum whenever
22 dissemination of such information is requested, to determine
23 whether such grounds continue to exist, and if grounds do
24 not exist such information shall be purged.

25 (c) Within the criminal justice agency maintaining the

1 information, access to criminal justice intelligence informa-
2 tion shall be limited to those officers or employees who have
3 both a need to know and a right to know such information.

4 (d) Criminal justice intelligence information may be
5 disseminated from the criminal justice agency which collected
6 such information only to a Federal agency authorized to re-
7 ceive the information pursuant to section 204 or to a crimi-
8 nal justice agency which needs the information to confirm
9 the reliability of information already in its possession or for
10 investigative purposes if the agency is able to point to specific
11 and articulable facts which taken together with rational in-
12 ferences from those facts warrant the conclusion that the indi-
13 vidual has committed or is about to commit a criminal act
14 and that the information may be relevant to the act.

15 (e) When access to criminal justice intelligence infor-
16 mation is permitted under subsection (c) or when such
17 information is disseminated pursuant to subsection (d) a
18 record shall be kept of the identity of the person having ac-
19 cess or the agency to which information was disseminated,
20 the date of access or dissemination, and the purpose for which
21 access was sought or information disseminated. Such records
22 shall be retained for at least three years.

23 (f) Direct remote terminal access to criminal justice
24 intelligence information shall not be permitted. Remote termi-
25 nal access shall be permitted to personal identification infor-

1 mation sufficient to provide an index of subjects of criminal
2 justice intelligence information and the names and locations
3 of criminal justice agencies possessing criminal justice intelli-
4 gence information concerning such subjects and automatically
5 referring the requesting agency to the agency maintaining
6 more complete information.

7 (g) An assessment of criminal justice intelligence in-
8 formation may be provided to any individual when necessary
9 to avoid imminent danger to life or property.

10 CRIMINAL JUSTICE INVESTIGATIVE INFORMATION

11 SEC. 211. (a) Criminal justice investigative informa-
12 tion may be maintained by a criminal justice agency only
13 for official law enforcement purposes. It shall be maintained
14 in a physically secure environment and shall be kept sep-
15 arate from criminal justice information. It shall not be main-
16 tained beyond the expiration of the statute of limitations for
17 the offense concerning which it was collected or the sealing
18 or purging of the criminal justice information related to such
19 offense, whichever occurs later.

20 (b) Criminal justice investigative information may be
21 disclosed pursuant to subsection 552 (b) (7) of title 5 of
22 the United States Code or any similar State statute, or pur-
23 suant to any Federal or State statute, court rule, or court
24 order permitting access to such information in the course of
25 court proceedings to which such information relates.

25

1 (c) Except when such information is available pursu-
2 ant to subsection (b), direct access to it shall be limited to
3 those officers or employees of the criminal justice agency
4 which maintains the information who have a need to know
5 and a right to know such information and it shall be dissem-
6 inated only to other governmental officers or employees who
7 have a need to know and a right to know such information
8 in connection with their civil or criminal law enforcement
9 responsibilities. Records shall be kept of the identity of per-
10 sons having access to criminal justice investigative informa-
11 tion or to whom such information is disseminated, the date of
12 access or dissemination, and the purpose for which access is
13 sought or files disseminated. Such records shall be retained
14 for at least three years.

15 (d) Criminal justice investigative information may be
16 made available to officers and employees of government
17 agencies for the purposes set forth in section 204.

18 TITLE III—ADMINISTRATIVE PROVISIONS; REG-
19 ULATIONS, CIVIL REMEDIES; CRIMINAL
20 PENALTIES

21 COMMISSION ON CRIMINAL JUSTICE INFORMATION

22 SEC. 301. CREATION AND MEMBERSHIP.—(a) There
23 is hereby created a Commission on Criminal Justice Infor-
24 mation (hereinafter the “Commission”) which shall have
25 overall responsibility for the administration and enforcement

1 of this Act. The Commission shall be composed of thirteen
2 members. One of the members shall be the Attorney General
3 and two of the members shall be designated by the President
4 as representatives of other Federal agencies outside of the
5 Department of Justice. One of the members shall be desig-
6 nated by the President on the recommendation of the Judicial
7 Conference of the United States. The nine remaining mem-
8 bers shall be appointed by the President with the advice and
9 consent of the Senate. Of the nine members appointed by the
10 President, seven shall be officials of criminal justice agencies
11 from seven different States at the time of their nomination,
12 representing to the extent possible all segments of the crim-
13 inal justice system. The two remaining Presidential appoint-
14 ees shall be private citizens well versed in the law of privacy,
15 constitutional law, and information systems technology, and
16 shall not have been employed by any criminal justice agency
17 within the five years preceding their appointments. Not
18 more than seven members of the Commission shall be of
19 the same political party.

20 (b) The President shall designate one of the seven
21 criminal justice agency officials as Chairman and such desig-
22 nation shall also be confirmed by the advice and consent of
23 the Senate. The Commission shall elect a Vice Chairman
24 who shall act as Chairman in the absence or disability of the
25 Chairman or in the event of a vacancy in that office.

1 (c) The designated members of the Commission shall
2 serve at the will of the President. The Attorney General
3 and the appointed members shall serve for terms of five
4 years. Any vacancy shall not affect the powers of the Com-
5 mission and shall be filled in the same manner in which the
6 original appointment or designation was made.

7 (d) Seven members of the Commission shall constitute
8 a quorum for the transaction of business.

9 SEC. 302. COMPENSATION OF MEMBERS.—(a) Each
10 member of the Commission who is not otherwise in the serv-
11 ice of the Government of the United States shall receive a
12 sum equivalent to the compensation paid at level IV of the
13 Federal Executive Salary Schedule, pursuant to section 5315
14 of title 5, prorated on a daily basis for each day spent in the
15 work of the Commission, and shall be paid actual travel ex-
16 penses, and per diem in lieu of subsistence expenses when
17 away from his usual place of residence, in accordance with
18 section 5 of the Administrative Expenses Act of 1946, as
19 amended.

20 (b) Each member of the Commission who is otherwise
21 in the service of the Government of the United States shall
22 serve without compensation in addition to that received for
23 such other service, but while engaged in the work of the
24 Commission shall be paid actual travel expenses, and per
25 diem in lieu of subsistence expenses when away from his

1 usual place of residence, in accordance with the provisions
2 of the Travel Expenses Act of 1949, as amended.

3 (c) Members of the Commission shall be considered
4 "special Government employees" within the meaning of
5 section 202 (a) of title 18.

6 SEC. 303. DURATION OF COMMISSION.—The Commis-
7 sion shall exercise its powers and duties for a period of five
8 years following the first appropriation of funds for its activi-
9 ties and the appointment and qualification of a majority of
10 the members. It shall make a final report to the President
11 and to the Congress on its activities as soon as possible after
12 the expiration of the five-year period and shall cease to exist
13 thirty days after the date on which its final report is sub-
14 mitted.

15 SEC. 304. POWERS AND DUTIES.—(a) For the purpose
16 of carrying out its responsibilities under the Act, the Com-
17 mission shall have authority—

18 (1) after consultation with representatives of crimi-
19 nal justice agencies subject to the Act, and after notice
20 and hearings in accordance with the Administrative
21 Procedures Act, to issue such regulations, interpretations,
22 and procedures as it may deem necessary to effectuate
23 the provisions of this Act, including regulations limit-
24 ing the extent to which a Federal criminal justice
25 agency may perform telecommunications or criminal

1 identification functions for State or local criminal justice
2 agencies or include in its information storage facilities,
3 criminal justice information, or personal identification in-
4 formation relative to violations of the laws of any State;

5 (2) to conduct hearings in accordance with sec-
6 tion 305;

7 (3) to bring civil actions for declaratory judgments,
8 cease-and-desist orders, and such other injunctive relief
9 as may be appropriate against any agency or individual
10 for violations of the Act or of its rules, regulations, in-
11 terpretations or procedures;

12 (4) to make studies and gather data concerning the
13 collection, maintenance, use, and dissemination of any
14 information subject to the Act and compliance of crimi-
15 nal justice agencies and other agencies and individuals
16 with the provisions of the Act;

17 (5) to require from each criminal justice agency
18 information necessary to compile a directory of criminal
19 justice information systems subject to the Act and pub-
20 lish annually a directory identifying all such systems and
21 the nature, purpose, and scope of each;

22 (6) to conduct such audits and investigations as it
23 may deem necessary to insure enforcement of the Act;
24 and

25 (7) to delay the effective date of any provision of

1 this Act for up to one year, provided that such delay
2 is necessary to prevent serious adverse effects on the
3 administration of justice.

4 (b) The Commission shall report annually to the Presi-
5 dent and to the Congress with respect to compliance with
6 the Act and concerning such recommendations as it may have
7 for further legislation. It may submit to the President and
8 Congress and to the chief executive of any State such interim
9 reports and recommendations as it deems necessary.

10 SEC. 305. HEARINGS AND WITNESSES.— (a) The Com-
11 mission, or, on authorization of the Commission, any three
12 or more members, may hold such hearings and act at such
13 times and places as necessary to carry out the provisions of
14 this Act. Hearings shall be public except to the extent that
15 the hearings or portions thereof are closed by the Commis-
16 sion in order to protect the privacy of individuals or the
17 security of information protected by this Act.

18 (b) Each member of the Commission shall have the
19 power and authority to administer oaths or take statements
20 from witnesses under affirmation.

21 (c) A witness attending any session of the Commission
22 shall be paid the same fees and mileage paid witnesses in
23 the courts of the United States. Mileage payments shall be
24 tendered to the witness upon service of a subpoena issued on
25 behalf of the Commission or any subcommittee thereof.

1 (d) Subpenas for the attendance and testimony of wit-
2 nesses or the production of written or other matter, required
3 by the Commission for the performance of its duties under
4 this Act, may be issued in accordance with rules or pro-
5 cedures established by the Commission and may be served
6 by any person designated by the Commission.

7 (e) In case of contumacy or refusal to obey a subpoena
8 any district court of the United States or the United States
9 court of any territory or possession, within the jurisdiction
10 of which the person subpoenaed resides or is domiciled or
11 transacts business, or has appointed an agent for the receipt
12 of service or process, upon application of the Commission,
13 shall have jurisdiction to issue to such person an order re-
14 quiring such person to appear before the Commission or a
15 subcommittee thereof, there to produce pertinent, relevant,
16 and nonprivileged evidence if so ordered, or there to give
17 testimony touching the matter under investigation; and any
18 failure to obey such order of the court may be punished as
19 contempt.

20 (f) Nothing in this Act prohibits a criminal justice
21 agency from furnishing the Commission information re-
22 quired by it in the performance of its duties under this Act.

23 SEC. 306. DIRECTOR AND STAFF.—There shall be a
24 full-time staff director for the Commission who shall be ap-
25 pointed by the President by and with the advice and consent

1 of the Senate and who shall receive compensation at the
2 rate provided for level V of the Federal Executive Salary
3 Schedule, pursuant to section 5316 of title 5. The President
4 shall consult with the Commission before submitting the
5 nomination of any person for appointment as staff director.
6 Within the limitation of appropriations and in accordance
7 with the civil service and classification laws, the Commission
8 may appoint such other personnel as it deems advisable:
9 *Provided, however,* That the number of professional per-
10 sonnel shall at no time exceed fifty. The Commission may
11 procure services as authorized by section 3109 of title 5,
12 but at rates for individuals not in excess of the daily equiv-
13 alent paid for positions at the maximum rate for GS-18 of
14 the General Schedule under section 5332 of title 5.

15 STATE INFORMATION SYSTEMS REGULATIONS

16 SEC. 307. (a) The Commission shall encourage each
17 of the States to create or designate an agency to exercise
18 statewide authority and responsibility for the enforcement
19 within the State of the provisions of the Act and any related
20 State statutes, and to issue rules, regulations, and procedures,
21 not inconsistent with this Act or regulations issued pursuant
22 to it, regulating the maintenance, use, and dissemination of
23 criminal justice information within the State.

24 (b) Where such agencies are created or designated, the
25 Commission shall rely upon such agencies to the maximum

1 extent possible for the enforcement of the Act within their
2 respective States.

3 (c) Where any provision of this Act requires any crim-
4 inal justice agency to establish procedures or issue rules or
5 regulations, it shall be sufficient for such agencies to adopt
6 or certify compliance with appropriate rules, regulations,
7 or procedures issued by any agency created or designated
8 pursuant to subsection (a) of this section or by any other
9 agency within the State authorized to issue rules, regulations,
10 or procedures of general application, provided such rules,
11 regulations or procedures are in compliance with the Act.

12 CIVIL REMEDIES

13 SEC. 308. (a) Any person aggrieved by a violation of
14 this Act or regulations promulgated thereunder shall have
15 a civil action for damages or any other appropriate remedy
16 against any person or agency responsible for such violation.
17 An action alleging a violation of section 209 shall be avail-
18 able only after any administrative remedies established pur-
19 suant to that section have been exhausted.

20 (b) The Commission on Criminal Justice Information
21 System shall have a civil action for declaratory judgments,
22 cease-and-desist orders, and such other injunctive relief as
23 may be appropriate against any criminal justice agency in
24 order to enforce the provisions of the Act.

25 (c) If a defendant in an action brought under this sec-

1 tion is an officer or employee or agency of the United States
2 the action shall be brought in an appropriate United States
3 district court. If the defendant or defendants in an action
4 brought under this section are private persons or officers or
5 employees or agencies of a State or local government, the
6 action may be brought in an appropriate United States dis-
7 trict court or in any other court of competent jurisdiction.
8 The district courts of the United States shall have jurisdiction
9 over actions described in this section without regard to the
10 amount in controversy.

11 (d) In any action brought pursuant to this Act, the
12 court may in its discretion issue an order enjoining main-
13 tenance or dissemination of information in violation of this
14 Act or correcting records of such information or may order
15 any other appropriate remedy, except that in an action
16 brought pursuant to subsection (b) the court may order
17 only declaratory or injunctive relief.

18 (e) In an action brought pursuant to subsection (a),
19 any person aggrieved by a violation of this Act shall be
20 entitled to actual and general damages but not less than
21 liquidated damages of \$100 for each violation and reasonable
22 attorneys' fees and other litigation costs reasonably incurred.
23 Exemplary and punitive damages may be granted by the
24 court in appropriate cases brought pursuant to subsection

1 (a). Any person or agency responsible for violations of
2 this Act shall be jointly and severally liable to the person
3 aggrieved for damages granted pursuant to this subsection:
4 *Provided, however,* That good faith reliance by an agency
5 or an official or employee of such agency upon the assurance
6 of another agency or employee that information provided
7 the former agency or employee is maintained or dissemi-
8 nated in compliance with the provisions of this Act or any
9 regulations issued thereunder shall constitute a complete
10 defense for the former agency or employee to a civil damage
11 action brought under this section but shall not constitute
12 a defense with respect to equitable relief.

13 (f) For the purposes of this Act the United States
14 shall be deemed to have consented to suit and any agency
15 of the United States found responsible for a violation shall
16 be liable for damages, reasonable attorneys' fees, and litiga-
17 tion costs as provided in subsection (e) notwithstanding
18 any provisions of the Federal Tort Claims Act.

19 (g) A determination by a court of a violation of inter-
20 nal operating procedures adopted pursuant to this Act should
21 not be a basis for excluding evidence in a criminal case
22 unless the violation is of constitutional dimension or is other-
23 wise so serious as to call for the exercise of the supervisory
24 authority of the court.

1 CRIMINAL PENALTIES

2 SEC. 309. Any Government employee who willfully
3 disseminates, maintains, or uses information knowing such
4 dissemination, maintenance, or use to be in violation of this
5 Act shall be fined not more than \$10,000.

6 AUDIT AND ACCESS TO RECORDS BY THE GENERAL

7 ACCOUNTING OFFICE

8 SEC. 310. (a) The Comptroller General of the United
9 States shall from time to time, at his own initiative or at the
10 request of either House or any committee of the House of
11 Representatives or the Senate or any joint committee of the
12 two Houses, conduct audits and reviews of the activities of
13 the Commission on Criminal Justice Information under this
14 Act. For such purpose, the Comptroller General, or any of
15 his duly authorized representatives, shall have access to and
16 the right to examine all books, accounts, records, reports,
17 files, and all other papers, things, and property of the Com-
18 mission or any Federal or State agencies audited by the
19 Commission pursuant to section 304 (a) (6) of this Act,
20 which, in the opinion of the Comptroller General, may be
21 related or pertinent to his audits and reviews of the activities
22 of the Commission. In the case of agencies audited by the
23 Commission, the Comptroller General's right of access shall
24 apply during the period of audit by the Commission and for
25 three years thereafter.

1 (b) Notwithstanding any other provision of this Act,
2 the Comptroller General's right of access to books, accounts,
3 records, reports, and files pursuant to and for the purposes
4 specified in subsection (a) shall include any information
5 covered by this Act. However, no official or employee of
6 the General Accounting Office shall disclose to any person
7 or source outside of the General Accounting Office any such
8 information in a manner or form which identifies directly or
9 indirectly any individual who is the subject of such
10 information.

11 PRECEDENCE OF STATE LAWS

12 SEC. 311. Any State law or regulation which places
13 greater restrictions upon the maintenance, use, or dissemina-
14 tion of criminal justice information, criminal justice intelli-
15 gence information, or criminal justice investigative informa-
16 tion or which affords to any individuals, whether juveniles or
17 adults, rights of privacy or other protections greater than
18 those set forth in this Act shall take precedence over this Act
19 or regulations issued pursuant to this Act with respect to any
20 maintenance, use, or dissemination of information within
21 that State.

22 APPROPRIATIONS AUTHORIZED

23 SEC. 312. For the purpose of carrying out the provi-
24 sions of this Act, there are authorized to be appropriated
25 such sums as the Congress deems necessary.

1 SEVERABILITY

2 SEC. 313. If any provision of this Act or the application
3 thereof to any person or circumstance is held invalid, the
4 remainder of the Act and the application of the provision to
5 other persons not similarly situated or to other circumstances
6 shall not be affected thereby.

7 REPEALERS

8 SEC. 314. The following provisions of law are hereby
9 repealed:

10 (a) the second paragraph under the headings en-
11 titled "Federal Bureau of Investigation; Salaries and
12 Expenses" contained in the Department of Justice Ap-
13 propriations Act, 1973; and

14 (b) any of the provisions of the Privacy Act of
15 1974 (Public Law 93-579, 88 Stat. 1896), applicable
16 to information covered by this Act.

17 EFFECTIVE DATE

18 SEC. 315. The provisions of sections 301 through 307
19 and of sections 310 and 312 of this Act shall take effect upon
20 the date of enactment and members, officers, and employees
21 of the Commission on Criminal Justice Information may
22 be appointed and take office at any time after that date.
23 Provisions of the remainder of the Act shall take effect one

1 year after the date of enactment: *Provided, however, That*
2 the Commission may, in accordance with section 304 (b),
3 delay the effective date of any provision for up to one addi-
4 tional year.

Approved For Release 2003/06/26 : CIA-RDP84-00780R006700040019-7

94TH CONGRESS
1ST SESSION

S. 2008

A BILL

To protect the constitutional rights and privacy
of individuals upon whom criminal justice
information has been collected and to control
the collection and dissemination of criminal
justice information, and for other purposes.

By Mr. TUNNEY

JUNE 25 (legislative day, JUNE 6), 1975

Read twice and referred to the Committee on the
Judiciary

Approved For Release 2003/06/26 : CIA-RDP84-00780R006700040019-7